

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:) **Bankruptcy No. 13-20842 CMB**
William John Monsour,)
 Debtor,) **Chapter 11**
William John Monsour,)
 Plaintiff,) **Document No.**
vs.)
Wells Fargo Bank and) **Adversary No. 15-**
PNC Bank,)
 Defendants.)

COMPLAINT TO ENFORCE CONFIRMED PLAN

AND NOW, comes the Debtor, by and through his attorneys, CALAIARO VALENCIK, and Donald R. Calaiaro and presents the following:

JURISDICTION AND VENUE

1. This case was commenced on February 28, 2013, by the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code.
2. This proceeding arises under or in, or is related to, the Debtors' Chapter 11 case.
3. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §157(a), 28 U.S.C. §1334(b), 11 U.S.C. §105, Federal Rules of Bankruptcy Procedure – Rule 7001, and the Order of the United States District Court for the Western District of Pennsylvania referring all matters relating to pending bankruptcy cases to the Bankruptcy Court.
4. This is a “core proceeding” pursuant to 28 U.S.C. §157(b).
5. Venue is proper in this District pursuant to 28 U.S.C. §1409(a).

THE PARTIES

6. Wells Fargo Bank was a creditor of the Debtor at the commencement of this case. They hold a first mortgage on real estate located at 209 Glen Forest Drive, Greensburg, PA 15601.

7. PNC Bank was a creditor of the Debtor at the commencement of this case. They hold a second mortgage on real estate located at 209 Glen Forest Drive, Greensburg, PA 15601.

8. The Debtor filed a Motion to Abandon Real Estate on July 17, 2013.

9. The Debtor asked the Court for authority to abandon real estate located at 209 Glen Forest Drive, Greensburg, PA 15601 because the Debtor remained obligated to maintain this property until the deed is transferred into another party's name. The maintenance on this property is a drain on the assets of the estate and the Debtor who remains liable to fines from the city if maintenance is not performed. The Debtor also remains liable for any accidents that may occur on the property. This property has developed black mold and this creates a further risk.

10. The Court entered the Order allowing the Debtor to abandon the property on August 2, 2013.

11. The Chapter11 Plan of Reorganization dated August 27, 2013, provided for the following treatment:

"7.5 Class 5, Wells Fargo/PNC Bank. The participants in this class have a 1st and 2nd Mortgages on 209 Glen Forest Drive Greensburg Pa 15601. They will receive their collateral in satisfaction of these claims. On July 17, 2013, the Debtor filed a Motion to Abandon this property with the Bankruptcy Court.

On August 2, 2013 the Court entered a Default Order Granting the Motion to Abandon. Upon confirmation, the Lenders shall be permitted to enforce their rights under the mortgage and the Debtor will consent to a judgment in foreclosure. The Debtor will offer a deed in lieu of foreclosure to these lenders provided the lender pays all costs of preparation and recording the deed. In the alternative, the lender may request the Debtor to conduct a sale of the collateral free and clear of all liens and the Debtor will cause an appropriate Motion to sell to be filed; provided the lender pays for all costs, legal fees and closing costs associated with this sale. In the event the lender elects any deed in lieu of foreclosure or Sale through the Bankruptcy Court, that election must be made prior to the date upon which the Order confirming the Plan of Reorganization becomes final.

The lenders in this class must take affirmative action to enforce their rights to foreclose or sell this property prior to the filing of the motion for a Final Decree; but not less than 60 days after the Plan Effective date. The Reorganized Debtor has elected not to repair or to maintain this property. These costs would be burdensome to the Reorganized Debtor. If they fail to enforce their rights and the Debtor must take action and expend money to maintain this property, the mortgages in Class 5 will be deemed to have been released and they shall be given unsecured claims. In the event that the class 5 participants fail to act timely, the Debtor shall be entitled to an Order satisfying these mortgages when he files a Motion for a Final decree. “

12. The Debtor filed a Plan of Reorganization dated, August 27, 2013.
13. That Plain of Reorganization was confirmed on June 18, 2014.
14. The Debtor substantially consummated the plan.
15. A Final Decree was entered on September 15, 2014, and the case was closed.
16. The Debtor filed a Motion to Reopen the Bankruptcy Case on December 17, 2014, that specifically explained that he wanted to enforce the plan provisions regarding this property.
17. The Court entered an Order on January 12, 2015, reopening the Debtor's Bankruptcy Case.

REQUEST FOR RELIEF

18. The Plan of Reorganization dated June 18, 2014, required that Class 5, Wells Fargo and PNC Bank, take affirmative action to enforce their rights to foreclose or sell the property prior to the filing of the Motion for Final Decree; but not less than 60 days after the plan effective date. This Plan provision was necessary because the maintenance of this property was a potential liability and a threat to viability of the Plan.
19. The deadline for Wells Fargo or PNC Bank to take action to enforce their rights was December 1, 2014.
20. As of December 1, 2014, neither Wells Fargo nor PNC Bank has taken any action to enforce their rights.
21. Despite notice of the Motion to Reopen this case, Wells Fargo Bank and PNC Bank still have not instituted a foreclosure action as of February 17, 2015.

22. The Debtor is seeking to enforce the provisions in article 7.5 of his confirmed Plan of Reorganization.

23. The Debtor requests an Order satisfying the mortgages of Wells Fargo and PNC Bank on 209 Glen Forest Drive, Greensburg, PA 15601, which is in accordance with the article 7.5 of his confirmed Plan of Reorganization.

WHEREFORE, Debtor requests that this Honorable Court enter an Order satisfying the mortgages of Wells Fargo at instrument no. 2002-09060057169 in filed in the Westmoreland County Recorder of Deeds Office and PNC Bank at instrument no. 2005-504050016167 in filed in the Westmoreland County Recorder of Deeds Office on 209 Glen Forest Drive, Greensburg, PA 15601.

Respectfully submitted,

DATED: February 24, 2015

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